

MF 01-15

Tax Type: Motor Fuel Use Tax

Issue: Dyed/Undyed Diesel Fuel (Off Road Usage)

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket No. 00-ST-0000
v.)	
)	
ABC COUNTY HIGHWAY)	Claim for Credit or Refund
DEPARTMENT)	
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

Appearances: Jim Day, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Gary L. Kruger for ABC County Highway Department.

Synopsis:

The Department of Revenue (“Department”) issued a letter denying a claim for a motor fuel tax refund filed by ABC County Highway Department (“taxpayer”). The claim requested a refund of taxes paid on undyed diesel fuel used for off-highway purposes for the period of January 2000 to July 2000. The taxpayer timely protested the Department’s denial of the claim. The taxpayer waived its right to an evidentiary hearing and requested that this matter be decided based on written submissions by the parties. After reviewing the documentation presented, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The taxpayer filed a claim for a refund of tax paid on undyed diesel fuel for the period of January 2000 to July 2000. (Dept. Ex. #1)

2. The undyed diesel fuel for which the taxpayer requests the refund was used in the following equipment: tractors, loader, backhoes and grader. The equipment was used for snow removal, grading, ditching, and mowing. (Dept. Ex. #1)

3. On September 6, 2000, the Department issued a letter to the taxpayer that denied the taxpayer's claim in the amount of \$425.27 for motor fuel tax paid on the fuel used in the equipment. (Dept. Ex. #2)

CONCLUSIONS OF LAW:

Section 13 of the Motor Fuel Tax Act (Act) (35 ILCS 505/1 *et seq.*), provides in part as follows:

“Any person other than a distributor or supplier, who loses motor fuel through any cause or uses motor fuel (upon which he has paid the amount required to be collected under Section 2 of this Act) for any purpose other than operating a motor vehicle upon the public highways or waters, shall be reimbursed and repaid the amount so paid. ***

No claim based upon the use of undyed diesel fuel shall be allowed except for undyed diesel fuel used by a commercial vehicle, as that term is defined in Section 1-111.8 of the Illinois Vehicle Code, for any purpose other than operating the commercial vehicle upon the public highways and unlicensed commercial vehicles operating on private property.” (35 ILCS 505/13)

Section 1-111.8 of the Illinois Vehicle Code (625 ILCS 5/1-100 *et seq.*) provides the following definition of commercial vehicle:

“Any vehicle operated for the transportation of persons or property in the furtherance of any commercial or industrial enterprise, For-Hire or Not-For-Hire, but not including a commuter van, a vehicle used in a ridesharing arrangement when being used for that purpose, or a recreational vehicle not being used commercially.” (625 ILCS 5/1-111.8)

The Vehicle Code also provides the following definition of vehicle:

“Every device, in, upon or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power, devices used exclusively upon stationary rails or tracks and snowmobiles * * *.”
(625 ILCS 5/1-217)

The provision in section 13 that limits claims for undyed diesel fuel was added to the Act effective January 1, 2000. The taxpayer argues that it was not required to pay tax on the fuel used in its equipment prior to the change in the law, and it is not required to pay tax under the current version. The taxpayer claims that the intent of the law has not changed, and its refund was denied merely because of a technical change in the law. The taxpayer contends that under the first paragraph of section 13 it is entitled to a refund for tax paid on fuel used for off-highway purposes. Because its equipment was used off-highway, the taxpayer claims that the tax paid on the fuel should be refunded.

The Department argues that the taxpayer is not entitled to the refund because none of the taxpayer’s equipment is a commercial vehicle. The Department contends that the term “commercial vehicle” includes vehicles such as buses, dump trucks, concrete trucks and tractor-trailers. The Department claims that because the taxpayer’s equipment is operated for purposes such as digging and mowing grass, it is not included in the definition of commercial vehicle. The Department states that the taxpayer is not entitled to the refund because the undyed diesel fuel was not used in a commercial vehicle.

The Act states that no claim based upon the use of undyed diesel fuel shall be allowed except for fuel used by a commercial vehicle. Even though the taxpayer’s equipment was used off-highway, the statute clearly states that the fuel must be used in a commercial vehicle before a claim can be allowed for undyed diesel fuel. The equipment used by the taxpayer does not fall within the definition of commercial vehicle. Although the loader and backhoes at first glance may appear to fit within the definition because they are generally used to transport property from

one place to another, the term “vehicle” under the Vehicle Code is defined as a device by which property “is or may be transported or drawn upon a highway.” 625 ILCS 5/1-217. Loaders and backhoes are not used to transport property on highways and are therefore not commercial vehicles. The tractors and grader also are not commercial vehicles because they are not operated for the transportation of persons or property and are not used upon a highway. Because the taxpayer did not use the undyed diesel fuel in commercial vehicles, its claim must be denied.

Recommendation:

For the foregoing reasons, it is recommended that the taxpayer’s claim for a credit or refund be denied.

Linda Olivero
Administrative Law Judge

Enter: July 6, 2001